

**Request for Reconsideration:**

Claims 1-13 are pending in this application. In response to the Office Action's objections to the specification and drawings, Applicant is amending the application, as follows:

1. Applicant used item #119 to describe both container chute 119 and pivots 119. Therefore, Applicant is amending Para. [0051] to replace "pivot 119" with "pivot 129" and is making corresponding amendments to **Fig. 5**.
2. Due to a typographical error, Applicant twice referred to bulk delivery apparatus "106," instead of bulk delivery apparatus "104," in Para. [0029]. Applicant is amending Para. [0029] to correct these errors.
3. Applicant failed to refer to item #101b and item #104b, which are depicted in **Fig. 1**, in the specification. Item #101b should not appear in **Fig. 1**. Applicant is amending **Fig. 1** to replace item #101b with item #101a. Applicant also is amending Para. [0034] to properly describe item # 104b.
4. With respect to claims 7 and 12, Applicant is amending Paras. [0054-0056] to describe "first strainer 126" and "second strainer 127," and is amending Paras. [0069-0071] to describe "control unit 128." Applicant also is amending **Figs. 1** and **10b** to depict strainers 126 and 127, respectively, and is amending **Fig. 1** to depict control unit 128.

Applicant respectfully requests that the Examiner enter these amendments and reconsider the rejections and objections in view of the foregoing amendments and the following remarks. No fees are due as result of this submission. However, in the event of any variance between the fees determined by Applicant and the fees determined by the U.S. Patent and Trademark Office ("PTO"), please charge such variance to the undersigned's Deposit Account No. 02-0375.

**Remarks:**

1. Objections and Rejections.

Claims 1-13 are pending in this application. In addition to rejecting all of the pending claims, the Office Action objects to the specification and to several of the drawings. Applicant respectfully traverses the objections to the specification and drawings in view of the foregoing amendments.

As noted above, claims 1, 11, and 13 stand rejected under 35 U.S.C. § 112, ¶ 2, as allegedly indefinite. Claims 1-13 also stand provisionally rejected under the judicially-created doctrine of obviousness-type, double patenting in view of the following claims of Applicant's six (6), co-pending patent applications: (1) claims 1-81 of U.S. Patent Application No. 10/601,669; (2) claims 1-40 of U.S. Patent Application No. 10/601,674, now issued as Patent No. US 6,993,884 B2 to Baranowski; (3) claims 1-29 of U.S. Patent Application No. 10/601,670, now issued as Patent No. US 7,036,679 B2 to Baranowski; (4) claims 1-16 of U.S. Patent Application No. 10/743,425; (5) claims 1-20 of U.S. Patent Application No. 10/743,426, now issued as Patent No. US 7,063,215 B2 to Baranowski; and (6) claims 1-10 of U.S. Patent Application No. 10/743,440.<sup>1</sup> In addition, claims 1-3 and 6-11 stand rejected under 35 U.S.C. § 102(b), as allegedly anticipated by U.S. Patent No. 4,398,612 to Mikami *et al.* ("Mikami"). Moreover, claims 4, 5, and 12 stand rejected under 35 U.S.C. § 103(a), as allegedly rendered obvious by Mikami in view of U.S. Patent No. 3,782,878 to Hudson, and claim 13 under 35 U.S.C. § 103(a), as allegedly rendered obvious by Mikami in view of Hudson, as applied to claim 12, and further in view of U.S. Patent No. 5,613,590 to Simionato. Applicant respectfully traverses.

2. Indefiniteness Rejections.

As noted above, claims 1, 11, and 13 stand rejected as allegedly indefinite. In response to the rejections of claims 11 and 13, Applicant is amending these claims to move the phrase "to the feeder bowl" within the claim to thereby clarify the meaning of that phrase. With respect to claim 1, although the Office Action contends that Applicant does not refer to a "dispensing chute" in the specification. Nevertheless, Applicant describes a "dispensing chute" in the

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<sup>1</sup> Because at least some of these patent applications have issued, this rejection should no longer be a "provisional" rejection with respect to the issued patents.

specification at Para. [0007]. An embodiment of the dispensing chute generally comprises first chamber 113, second chamber 114, and holding chamber 115. In view of the foregoing amendments and remarks, Applicant respectfully requests that the Examiner withdraw the indefiniteness rejections to claims 1, 11, and 13.

3. Anticipation Rejections.

As noted above, claims 1-3 and 6-11 stand rejected as allegedly anticipated by Mikami. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. . . . 'The identical invention must be shown in as complete detail as is contained in the . . . claim.'" MPEP 2131 (emphasis added; citations omitted). Applicant respectfully traverses.

This application, as amended, includes two independent claims, claims 1 and 7. Claims 1 and 7 describe a dispensing system, such as a rotary, vibratory dispenser. Claim 1 describes an embodiment of the dispenser in which the dispensing paths rotate and the feeder bowl may or may not rotate, and claim 7 describes an embodiment of the dispenser, comprising the dispensing paths, rotates and the feeder bowl may or may not rotate. With respect to independent claims 1 and 7, the Office Action contends that Mikami discloses each of the described elements of each claim. Nevertheless, with respect to claims 1 and 7, the Office Action does not contend that Mikami discloses a rotation drive for rotating the dispensing paths or the dispenser.

Referring to Mikami's **Fig. 1**, Mikami describes "a conically shaped dispersion table 1 is fixed on an electromagnetic vibrator 2 and adapted to perform spiral reciprocating vibratory motion. Alternatively, the dispersion table 1 may be designed to rotate in one direction in which case an electric motor may be used instead of the vibrator 2." Mikami, Column 4, Lines 1-6 (emphasis added). Thus, Mikami describes two possible movements for its dispersion table 1. First, a "spiral reciprocating vibratory motion" generated by vibrator 2 which is mounted on support plate 10. Second, "rotat[ion] in one direction" generated by a motor (not shown) which used instead of vibrator 2. Thus, dispersion table 1 may be reciprocated or rotated depending upon the device on which it is mounted, but in either case, that device is mounted on support plate 10.

Mikami further states that “[a] plurality of feed troughs 3 are radially arranged around the outer periphery of the dispersion table 1, with their lower portions disposed under and out of contact with the dispersion table 1. . . . An electromagnetic vibrator 7 is provided for each feed trough 3 and has the associated feed trough 3 fixed thereto. . . . A round support plate 10 is positioned over a frame 11 by a plurality of legs 12 erected on and fixed to the frame 11 and has the electromagnetic vibrators 2 and 7 mounted thereon.” Mikami, Column 4, Lines 6-32. Mikami does not describe (or even suggest) the rotation of feed troughs 3. Instead, Mikami describes each of troughs 3 fixed to an electromagnetic vibrator 7, and vibrators 2 and 7 separately fixed to support plate 10. Mikami, **Fig. 1**. In addition, Mikami specifically distinguishes between the “spiral reciprocating vibratory motion [of dispersion table 1], by the centrifugal force due to the twist reciprocating vibratory motion of the electromagnetic vibrator 2” and the inclines linear reciprocating vibratory motion” of troughs 3. Mikami, Column 4, Lines 58-65. Further, as noted above, support plate 10 is positioned over frame 11 by a plurality of legs 12. Thus, Applicant maintains that not only does Mikami not disclose expressly the rotation of troughs 3; but, given the structures depicted in **Fig. 1**, rotation of Mikami’s troughs 3 would appear to require the rotation of frame 11.

In view of the foregoing amendments and remarks, Applicant maintains that the Examiner fails to demonstrate that Mikami discloses a rotation drive for rotating said dispensing paths or the dispenser, as described in independent claim 1 or 7, of the above-referenced patent application. Because each and every element as set forth in Applicant’s claims 1 and 7 is not found, either expressly or inherently described, in Mikami, the Office Action does not demonstrate that Mikami anticipates Applicant’s claim 1 or 7 or claims 2, 3, 6, or 8-11, which depend therefrom. Therefore, in view of the foregoing amendments and remarks, Applicant respectfully requests that the Examiner withdraw the anticipation rejections of claims 1-3 and 6-11.

4. Obviousness Rejections.

As noted above, claims 4, 5, and 12 stand rejected as allegedly rendered obvious by Mikami in view of Hudson, and claim 13, as allegedly rendered obvious by Mikami in view of Hudson, as applied to claim 12, and further in view of Simionato. In order for the Office Action to establish a *prima facie* case of obviousness, at least three criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the

knowledge generally available to those of ordinary skill in the art, to modify the primary reference as proposed by the Examiner. Second, there must be a reasonable expectation of success. Third, the cited references must disclose or suggest all the claim elements. MPEP 2143.

As noted above, Mikami fails to disclose at least one element of Applicant's invention, as described in claims 1 and 7. Hudson appears to describe a plurality of rotating, dispensing paths 16. Hudson, Column 2, Lines 17-19; **Fig. 2**. Nevertheless, Hudson describes an apparatus in which dough is extruded through passages 16 and dies 15 to create noodles. Applicant maintains that Hudson does not supply the missing elements of Mikami. There is no suggestion or motivation to modify Hudson by opening these pressurized passages and combining them with a feeder bowl. Further, as noted above, Mikami describes different vibratory motions for its feeder table and its troughs 3, which would appear inconsistent with the rotation of Mikami's troughs.

Claims 4, 5, 12, and 13 are directly or indirectly dependent from independent claim 1. "If an independent claim is non-obvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious." MPEP 2143.03 (citations omitted). In view of the foregoing amendments and remarks with respect to claim 1, Applicant maintains that the Office Action fails to demonstrate that claims 1 is anticipated by Mikami. Thus, in view of the foregoing amendments and remarks with respect to the anticipation rejection of claim 1, the rejections of claims 4, 5, 12, and 13 are untenable.

Although the Office Action alleges that Mikami in view of Hudson, as applied to claim 12, and further in view of Simionato renders claim 13 obvious, the Office Action does not contend that Simionato discloses or suggest the elements of claim 1, from which claim 13 depends, that is missing Mikami in view of Hudson. Therefore, none of these references appears to supply the elements of claim 1 that are missing from Mikami. Moreover, to the extent that the Examiner believes that one or more of these references suggests the missing element of Mikami, the Examiner then must demonstrate a suggestion or motivation to modify Mikami to include the missing element.

5. Obviousness-Type, Double Patenting Rejections.

As noted above, claims 1-13 stand rejected *provisionally* under the judicially-created doctrine of obviousness-type double patenting in view of co-pending patent applications, U.S. Patent Application Nos. 10/601,669; 10/743,425; and 10/743,440, and claims 1-13 stand rejected under the judicially-created doctrine of obviousness-type double patenting in view of Patent No. US 6,993,884 B2; US 7,036,679 B2; and US 7,063,215 B2. Therefore, Applicant is enclosing three (3) Terminal Disclaimers to Obviate a Provisional Double Patenting Rejection Over a Pending "Reference" Application, three (3) Terminal Disclaimers to Obviate a Double Patenting Rejection Over a "Prior" Patent, and a Statement Under 37 C.F.R. § 3.73(b). Applicant's representative authorizes the PTO to charge the amount of \$780.00 (6 X \$130.00) covering the terminal disclaimer fees under 37 C.F.R. § 1.20(d) (Code 1814) to the undersigned's Deposit Account No. 02-0375. In the event of any variance between the fees determined by Applicant and those determined by the PTO, please charge or credit such variance to the undersigned's Deposit Account No. 02-0375. In view of the enclosed Terminal Disclaimers, Applicant respectfully requests that the Examiner withdraw the obviousness-type double patenting rejections of claim 1-13 of this application.

**Conclusion:**

Applicant respectfully submits that this application, as amended, is in condition for allowance, and such disposition is earnestly solicited. If the Examiner believes that an

interview with Applicant's representatives, either in person or by telephone, would expedite prosecution of this application, we would welcome such an opportunity.

Respectfully submitted,  
BAKER BOTTS L.L.P.

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Enclosures